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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,716	02/19/2004	Marc R. Bernard	009584-0308305	5594
27498	7590	05/17/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN LLP			NGUYEN, HANH N	
2475 HANOVER STREET			ART UNIT	
PALO ALTO, CA 94304-1114			PAPER NUMBER	
			2662	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,716

Applicant(s)

BERNARD ET AL.

Examiner

Hanh Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Application filed 2/19/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-28 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 10-28 are rejected under 35 USC 103(a) as being unpatentable over Carley (Pat. 6,708,137 B2).

Regarding claims 1, 11, 12, 13, 14, 16, 19, 21, 23, 25 and 27, Carley discloses a method of data transfer (method shown in system 10, fig.2) comprising: transmitting, to a data collection agent (DCA)20 (fig.2), an indication of a time relative to a current system time (user 70 transmits a request for a network performance data to data collection agent 20, the request includes a time range over which network performance data is collected, see col.5, lines 42-50, col.10, lines 60-65) ; receiving network data collected at the ONU and associated with the

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transmitted indication (the requested network performance data is collected at the DCA 20, forwarded to performance data repository 40, col.10, lines 24-45); and storing the received network data (storing the network performance data at the database 40, col.10, lines 45-50). According to specification, page 8, the claimed system time is interpreted as time range. Carley discloses the DCA 20 is located in passive optical network network 25 (col.9, lines 40-48). Therefore, it would have been obvious to one ordinary skilled in the art to modify the Carley by having an ONU to transmit current system time to an ONU and stored the received network data in order to determine the status or network performance such as network traffic, packet loss, history of network performance.

Regarding claims 2, 20 and 26, as explained in the rejection of claim 1, Carley further discloses a processing server 55 receiving a request for network performance data, transmitting performance data (receiving from a management system, a request for network data, and transmitting portion of stored network data col.10, lines 45-60)

Regarding claims 3, as explained in the rejection of claim 1, the data collection agents 20 can be ONU when used in PON network 25.

Regarding claims 10, 18, 24 and 28, Carley discloses the method of claim 1, further comprising maintaining a flag indicative of a validity of the received network data (fig.1 discloses at block 132 which compares analyzed performance data with other previous performance data in the past to determine whether the network traffic is "in control" or "out control" at block 134, col.9, lines 20-25, & col.12, lines 25-45 & col.14, lines 20-40).

Regarding claims 5, 6, 7, 15 and 22, Carley discloses the stored network data includes a plurality of bins (performance repository 40 is a data base, therefore, including a plurality of

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bins, col.10, lines 38-42); the network data is collected and received at 15-minute intervals (DCA 20 is configured to test performance data once per minute or preferably at evenly spaced intervals, therefore, can be modified to be collected and received at 15-minute intervals, col.9, line 67 to col.10, line 10); and the stored network data includes at least one daily counter (data repository 40 retains data provided to it in a predetermined period such as 3 months, therefore, can be modified to store data and update daily, col.11, lines 10-15).

Regarding claims 4 and 17, Carley discloses the method of claim 1, further comprising: receiving a request to reset network data associated with the ONU; and deleting at least a portion of the stored network data (data collected by DCA 20 remains in data base 40 until a user request 72 is initiated by web browser 70. This means a user may repeatedly transmit requests to DCA 20 which updates the contents of data base 40, col.10, lines 50-60).

Allowable Subject Matter

Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 8, the prior art does not disclose resetting at least a portion of the stored network data if a difference between the new system time and a current system time exceeds a predetermined value.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

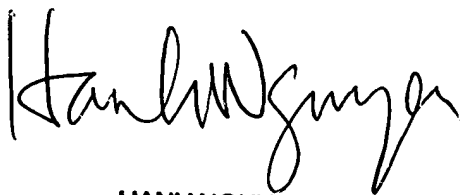
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Boyd et al. (Pat. 6,700,903 B1) discloses Upstream Scrambler sending System and method in a PON.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Mnday-Friday from 8AM to 5PM. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached on 571 272 3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Hanh Nguyen', with a stylized, cursive script.

**HANH NGUYEN
PRIMARY EXAMINER**